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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 STATE OF QATAR,

4 Plaintiff,

New York, N.Y.

5 v.

19 Civ. 5567 (AJN)

6 FIRST ABU DHABI BANK PJSC,
7 SAMBA FINANCIAL GROUP SJSC,

8 Defendants.

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9
10 October 11, 2019
3:55 p.m.

11 Before:

12 HON. ALISON J. NATHAN,

13 District Judge

14
15 APPEARANCES

16
17 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
Attorneys for Plaintiff

18 BY: GEOFFREY R. CHEPIGA
19 ANDREW J. EHRLICH
20 DANIEL J. KRAMER
HALLYE GOLDBLATT
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Attorneys for Defendant First Abu Dhabi Bank
22 BY: ROBERT H. PEES

23 LATHAM & WATKINS, LLP
Attorneys for Defendant Samba Financial
24 BY: MICHAEL LACOVARA
JOSEPH SERINO, JR.
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1 (Case called)

2 THE COURT: Good afternoon. I will take appearances
3 of counsel, starting with counsel for the plaintiff.

4 MR. KRAMER: Good afternoon, your Honor. Daniel
5 Kramer from Paul Weiss for plaintiffs. With me at counsel
6 table are Andrew Ehrlich, Jeff Chepiga, Hallye Goldblatt, and
7 Cameron Friedman.

8 THE COURT: Good afternoon.

9 MR. EHRLICH: Good afternoon, your Honor.

10 THE COURT: For the defendant?

11 MR. LACOVARA: Good afternoon, your Honor. Michael
12 Lacovara from Latham & Watkins with my partner Joe Serino for
13 defendant Samba Financial.

14 THE COURT: Good afternoon.

15 MR. PEES: Good afternoon, your Honor. Robert Pees of
16 Akin Gump for defendant First Abu Dhabi Bank.

17 THE COURT: We are here for our initial pretrial
18 conference in this matter. I do have your October 4th, 2019
19 letter and that indicates your disputes as to how to proceed.
20 I do also have what looks to be an interesting, fully briefed
21 motion to remand which is in the queue but I am not ready to
22 hear you on that. But, I am aware of it and recognize that
23 that is the basis for your disagreement.

24 So, why don't I just hear from you as to your proposal
25 as to how to proceed and I will give you resolution to that, at

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1 least.

2 Mr. Ehrlich?

3 MR. KRAMER: Daniel Kramer, your Honor.

4 THE COURT: Mr. Kramer. I apologize.

5 MR. KRAMER: So, you are right, we have a threshold
6 dispute here about which Court this case should be in. We
7 filed in New York State court. We raised common law claims,
8 fraud and conspiracy against these banks for market
9 manipulation for sending manipulative bid ask quotes to
10 platforms here in New York that are run by Reuters and
11 Bloomberg and we are set to proceed in state court. Defendants
12 removed, the motion is before your Honor. They removed on
13 three grounds, initially. I believe that they have withdrawn
14 the active state ground but before your Honor are FSIA issues
15 and also issues under Grable. We are happy to get into that
16 today, your Honor, or set a date to get into it, whatever your
17 Honor would like, but that's really the threshold issue before
18 we get into, I am sure, conditional disputes about how the case
19 should proceed once we know where it's going to proceed.

20 THE COURT: So, as much as this old civ pro professor
21 would love to get into that today -- you think I'm joking --
22 but I just haven't -- I have peeked at your briefs but because
23 there are about 200 motions ahead of them I am not in position
24 to have meaningful discussion about them yet. I will, once it
25 rises in the queue, which I recognize is a threshold issue so

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1 it will move up toward the top and I will get to it as soon as
2 I can. I will let you know if I do want to bring you in for
3 oral argument which I suspect I will. Among other things, it
4 will be interesting.

5 MR. KRAMER: Yes, it will, your Honor.

6 THE COURT: So I don't have a resolution -- that
7 doesn't resolve the question of whether you should just go
8 ahead and proceed with discovery because whether it is here or
9 in the state, discovery presumably will be had.

10 MR. KRAMER: Agreed. Could not agree with you more.
11 We think that there is going to be a lot of discovery in this
12 case. We see no reason not to get started, it will happen one
13 place or the other. Overwhelmingly, the documents are what the
14 documents are so we might as well, we have our document demands
15 out, we might as well get moving and make as much progress as
16 we possibly can and then your Honor will let us know whether
17 you agree with us that this belongs in state court or not.
18 But, let's not burden the time, let's use the time productively
19 to get the documents in and start the document review.

20 That is our view and we think that's the most
21 efficient way to go and it is not prejudicial to anyone because
22 they're going to have to do it one court or the other.

23 THE COURT: Let me hear a differing view from
24 Mr. Lacovara or Mr. Pees.

25 MR. LACOVARA: Thank you, your Honor.

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1 I guess we have a couple of issues with what
2 Mr. Kramer just said.

3 First of all, discovery is going to proceed only if
4 there is a case. Our position is not just that there is, that
5 the case should be heard by a federal court, but that then our
6 clients would be subject to immunity and there would be no case
7 at all.

8 We also believe there is no personal jurisdiction over
9 our client so the notion that the State of Qatar is going to
10 begin or repeat this massive third-party discovery that they
11 started already in state court, I think they had over 25
12 different entities that they were subpoenaing, I think it is
13 all well and good if you are the plaintiffs with the five
14 lawyers in the courtroom but it is not all well and good if you
15 are a third-party or a party that's going to be burdened with a
16 case that's not going to be in any United States court. That
17 would be the first issue.

18 THE COURT: So, just to play that out. If I deny the
19 motion to remand, you would then file a motion to dismiss based
20 on immunity and personal jurisdiction?

21 MR. LACOVARA: At least one or perhaps both. It
22 depends on the ground on which the Court rules it has
23 jurisdiction. If you recognize that the Foreign Sovereign
24 Immunities Act applies here, that our clients are subject to
25 that act, then we will anticipate filing a motion for dismissal

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1 because our clients are immune from suit in the United States
2 for these kinds of claims.

3 In any event, I believe -- and I won't speak for First
4 Abu Dhabi, Mr. Pees's client, but Samba certainly anticipates
5 filing motion for lack of personal jurisdiction in any event.

6 I would also add, as a practical matter, I am not sure
7 how one does third-party discovery in a case invoking the
8 subpoena power of a Court that it denies has subject matter
9 jurisdiction. That would seem to be a ground at least for a
10 facial objection for every third-party recipient -- or
11 recipient of a third-party subpoena, which would seem to me
12 there is going to be delay on significant court resource while
13 this threshold issue is determined.

14 So, our view is let's decide if we are in the right
15 court, let's decide if there is a case to be had in the United
16 States at all, and then start the document review which, just
17 based on what the State of Qatar has tried already, will be
18 enormous.

19 THE COURT: And in state court your time for
20 responsive pleading passed? Or no.

21 MR. LACOVARA: It did not, your Honor.

22 THE COURT: So, discovery was propounded but nothing
23 further than that?

24 MR. LACOVARA: That is correct. As far as I know, and
25 I will certainly defer to Mr. Kramer and his colleague, I

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1 believe no recipient of non-party discovery had propounded any
2 documents yet.

3 And, to the prejudice point, the plaintiff is a
4 sovereign, it suffers no prejudice if the case waits for the
5 resolution of these threshold issues. It's a case about
6 replenishing amounts allegedly improperly lost by the treasury
7 of a very wealthy state. If the case gets moved to 2020 for
8 discovery, no one suffers, your Honor.

9 THE COURT: And if the case is back in state court,
10 what is your posture there with respect to discovery?

11 MR. LACOVARA: Our posture is the same as it is here,
12 which is that if a Court has subject matter jurisdiction, we
13 will have threshold motions as to jurisdiction and whether
14 there is a well-pleaded complaint but, as you know, the
15 practice and the rules on staying discovery or granting
16 discovery, while a motion is pending are somewhat different
17 across the street than they are here.

18 THE COURT: With respect to the, I think this is for
19 Mr. Pees, for the anticipated motion for lack of personal
20 jurisdiction.

21 MR. PEES: Correct, your Honor.

22 Defendant First Abu Dhabi Bank would also be asserting
23 such a motion. In addition to the motions that have been
24 identified by Mr. Lacovara, I would point out I think both
25 defendants would be challenging the pleading on its face under

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1 Rule 12(b)(6) in the federal court or the state law equivalent
2 and basically the theory is Occam's Razor -- there is a
3 plausible claim here and we would be pointing out to the Court
4 that the turbulence caused by the ending of diplomatic
5 relations; land, sea, air travel; etc; all the items that are
6 set forth in the complaint which, according to the complaint
7 "de stabilized the Qatari economy," those are the factors that
8 can ruffle currency and value of government bonds and that
9 under the sort of simplest explanation, that's what happened
10 here. That's the motion that we will be making in addition to
11 the argument that there is no personal jurisdiction here and
12 that there is a Foreign Sovereign Immunity Act offense.

13 Thank you, your Honor.

14 THE COURT: Let's say that I stay discovery pending
15 resolution of the motion to remand. Then defendant's position
16 is discovery should also remain stayed pending the briefing and
17 resolution of the numerous motions you have just raised?

18 MR. PEES: Yes, your Honor.

19 In addition to the motions that we identified, there
20 is a Rule 9(b) motion as well and I think that that's yet
21 another reason why discovery should be stayed because we should
22 get the best, most robust complaint, well-pleaded, with
23 particulars required under both state or, as the case may be
24 federal law, and the scope of discovery will be shaped by what
25 are the alleged representations and when were they relied upon.

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1 So that's, I think, another reason to stay discovery,
2 your Honor.

3 MR. LACOVARA: Perhaps one qualifier with that, your
4 Honor.

5 We do recognize that jurisdictional discovery might
6 well be appropriate if we have a 12(b)(2) motion. So, Samba
7 Bank would at least not be opposed, in principle, to immediate
8 jurisdictional discovery. The plaintiffs are entitled to test
9 it.

10 THE COURT: But you are opposed to it now before
11 resolution of motion for remand.

12 MR. LACOVARA: As long as there is question about the
13 Court's subject matter jurisdiction, we are opposed to any sort
14 of discovery and would ask that those threshold issues would be
15 resolved first.

16 THE COURT: Mr. Kramer?

17 MR. KRAMER: Your Honor, this is the bind that
18 plaintiffs find themselves in when there is a removal and I
19 think it is in part why, as part of the removal statute,
20 Congress allows fee-shifting because we are in a position
21 where, if defendants get their way, we won't even begin to
22 start to talk about discovery for a year or two and that's just
23 a real harm, not just to my client but to the courts. So, our
24 view is that sooner or later they're going to have to come up
25 with their documents.

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1 THE COURT: I mean, they won't if their dismissal
2 motions are granted.

3 MR. KRAMER: Well, not necessarily, your Honor.

4 Certainly jurisdictional discovery we will get and
5 this Court has discretion not to stay discovery pending other
6 motions and when you look at the briefing here, I certainly
7 hope your Honor agrees with us that there is no basis for the
8 removal. They've already withdrawn one of the three grounds,
9 the act of state. There is no act of state here that's being
10 challenged and, your Honor, we will be before you arguing the
11 other two grounds are equally meritless and all that they will
12 have accomplished is the delay that is improper with an
13 improper removal.

14 And that's the bind we are in. And then I will tell
15 you, because I can see the future, I can tell you what will
16 happen: They'll delay and delay and delay until the day of
17 judgment comes and then they're going to say do your discovery
18 in 30 days or 60 days, so they're going to jam us. And we are
19 just trying to get out ahead of that. That's all we are trying
20 to do.

21 So, certainly jurisdictional discovery, even they
22 admit they're going to have to do. We would like to get as
23 much done as we possibly can because we understand your Honor
24 has a queue, right, and we are in the queue and it is going to
25 take time, it is going to burden the Court, and we don't want

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1 to sit around doing nothing for the next two, three, four, six
2 months.

3 THE COURT: Here is what we will do. This is my best
4 compromise.

5 I am going to stay discovery pending resolution of the
6 motion to remand. I will, however require, following the
7 motion to remand if the case stays here, dismissal motions will
8 be due two weeks after resolution of that motion so you will
9 have to prepare for that eventuality. Opposition to those
10 motions, one month after that. Reply, two weeks later. And I
11 will move as quickly as I can on the remand motion. As I say,
12 I probably will bring you in for argument on that and I will
13 take up, if we do get past remand, the question of whether
14 discovery -- certainly not all discovery, at least
15 jurisdictional discovery during the time that the -- I mean,
16 you may need jurisdictional discovery for purposes of those
17 motions so we will take that up at the time but, at the very
18 least, any dismissal motions will be due two weeks after
19 resolution of the remand motion assuming it's denied. Okay?

20 What else can I address at this time?

21 MR. KRAMER: I think that's all we have, your Honor.
22 Thank you.

23 MR. LACOVARA: Nothing further.

24 MR. PEES: Nothing further from us, your Honor.

25 THE COURT: Thank you. Have a nice weekend.

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